

The meeting opened at 7:01 p.m.

Present were: Anderson (Chair); McDonough (Clerk); Brown & Batchelder (Members); Magenheim & Bargnesi (Associate Members)

Petition No.: 4027

Premises affected: 80 Shawsheen Rd

Petitioner: Town of Andover

Members: (Chair); McDonough (Clerk); Batchelder (Member); Magenheim & Bargnesi (Associate Members)

There was a request to withdraw the petition without prejudice. McDonough made a motion to allow the withdrawal without prejudice. Magenheim seconded the motion & the Board voted (5-0) to allow the withdrawal without prejudice.

Member Brown arrived at 7:03 p.m.

Petition No.: 4031

Premises affected: 12 Fosters Pond Rd

Petitioner: Barber

Members: Anderson (Chair); McDonough (Clerk); Batchelder & Brown (Members); Magenheim & Bargnesi (Associate Members)

Allen & Virginia Barber represented themselves in their request for a variance from 4.1.2 &/or a special permit under 3.3.5 to raze an existing detached garage & build a new one, neither of which meet the minimum yard depth requirements. The lot is in the SRB district. Anderson noted that Member Brown recused himself from the case. Mr. Barber explained that due to repaving of the road in 2010, run-off flows into the garage causing irreparable deterioration. The proposed garage will be bigger & further from the lot line (9'). The hillside & trees prevent a larger setback. The application also requests relief for a proposed emergency generator that will be setback 8' from the side lot line. The 2010 zba decision was for renovation of the existing house. There were no other questions or comments from the board or the public. McDonough made a motion to close the public hearing. Batchelder seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. McDonough made a motion to approve the variance from Art. VIII, Sections 4.1.2 & 4.2.2 noting that the proposed garage is further from the lot line than the existing & that Fosters Pond Road bisects the lot. The hardship relates to the size, shape & location of the existing structures & the need to relocate the garage. The proposed will not be substantially detrimental to the established or future character of the neighborhood or town and can be granted without derogating from the purpose or intent of the bylaw. Batchelder seconded the motion & the Board voted (5-0) to grant the variance. The Board then discussed whether or not the requested relief for the generator. The Board felt that the legal ad did not deal with the generator & therefore it was not properly before them. Anderson suggested that the Board take no action & to allow the petitioner to withdraw the requested relief for the generator without prejudice. If the Building Division has an issue with the location of the generator, let them know that it is the sense of the ZBA that the generator is of a size & type that does not require relief in the proposed location. Mr. Barber asked to withdraw the request for the generator. Batchelder made a motion to allow the withdrawal without prejudice for the generator. McDonough seconded the motion & the Board voted to allow the withdrawal without prejudice. Batchelder then made a motion to deny the requested special permit as moot. McDonough seconded the motion & the Board voted to deny the special permit as moot. Magenheim will write the decision.

Petition No.: 4032

Premises affected: 276 N. Main Street

Petitioner: SASHA

Present were: Anderson (Chair); McDonough (Clerk); Batchelder & Brown (Members); Magenheim & Bargnesi (Associate Members)

Tom Childs represented the petitioner's request for a variance from 3.2 to allow the use of buildings on the premises for a charitable non-profit and a special permit under 3.1.3.B.6 & 3.2. The proposal is to rebuild a barn to be used as cold storage & bookkeeping. There are no dimensional issues with the proposed structure. Several members of the public asked about the use of the building/if fundraising will take place on site, whether the use currently exists on the property, if traffic will change, and looked at the plans. Much of the property is held in conservation restriction & can never be built on. Anderson asked if anyone present objected. There was no opposition as long as traffic will not be impacted, especially on Lowell Street. Brown made a motion to close the public hearing. McDonough seconded the motion & the Board voted unanimously to close the public hearing. The Board then proceeded to deliberate. McDonough sat off the deliberation. Everyone agreed that the barn structure is allowed as a matter of right. The requested special permit is for the philanthropic institution to manage the owner's trust. The Board discussed the use as secondary, the fact that the use could change & good practice in granting a special permit for it. Brown made a motion to approve the special permit under 3.1.3.B.6 & 3.2 to allow the use of the space within the proposed barn by the philanthropic / charitable institution as shown on the plans submitted. Batchelder seconded the motion. Brown suggested not making the special permit particular to a specific building on the property. Anderson clarified that the motion authorizes use of the barn for philanthropic use. Brown noted that the motion is specific to SASHA Associates. McDonough made a motion to deny the variance as moot. Brown seconded the motion & the Board voted unanimously to approve the special permit under 3.1.3.B.6 & 3.2 and to deny the variance as moot. Bargnesi will write the decision.

Petition No.: 4033

Premises affected: 209 N. Main St.

Petitioner: Guo

Present were: Anderson (Chair); McDonough (Clerk); Batchelder & Brown (Members); Magenheim & Bargnesi (Associate Members)

Joseph LaGrasse, architect at 1 Elm Square, Andover, represented Mr. Guo of Karma Restaurant in his request for special permits under 3.1.3.F.8 (temp/seasonal placement of outdoor chairs & tables), 3.1.3.C.12.a (sit-down restaurant) & 3.1.3.C.12.b (take-out service). The space is part of the former Marshall's retail store in Shawsheen Plaza, located in the MU district. A 20'x30' patio is proposed on the side of the building. It does not take up parking or emergency access space. Attorney Brian Burke, with an office in Littleton, MA, was also present on behalf of Mr. Guo. Approximately 30% of the business will be take-out food. Burke noted that a restaurant occupied this space for a long time. The use will not be detrimental to traffic or the plaza. There will be no delivery service. The hours of operation will be 11:30 a.m. – 10 p.m. 7 days per week. There being no further comments or questions, Brown made a motion to close the public hearing. McDonough seconded the motion & the Board voted unanimously to close the public hearing. Bargnesi sat off the deliberation. The Board then proceeded to deliberate. Brown reminded the Board that the take-out is accessory to a sit-down restaurant, as long the sit-down restaurant is the primary use. Therefore the request for relief for take-out service is moot. McDonough made a motion to grant a special permit under Section 3.1.3.C.12.a to allow the sit-down restaurant with accessory take out service by right. Batchelder seconded the motion & the Board voted (5-0) to approve the special permit for the sit-down restaurant. Brown then made a motion to approve the special permit under Section 3.1.3.F.8 to allow the temporary placement of tables & chairs, finding that it is consistent with neighborhood use. McDonough seconded the motion & the Board voted (5-0) to grant the special permit for temp. outdoor seating. Brown then made a motion to deny the requested variance as moot. Batchelder seconded the motion & the Board voted (5-0) to deny the variance as moot. Brown will write the decision.

Petition No.: 4035

Premises affected: 62 North St

Petitioner: 62 North St, LLC

Present were: Anderson (Chair); McDonough (Clerk); Batchelder & Brown (Members); Magenheim & Bargnesi (Associate Members)

Engineer Ben Osgood, Jr. of Pennoni Associates represented Dave Murray, owner, who was also present. The lot was created in 1929 and has been held in the same status (size & frontage) since its creation. The lot was not held in common ownership. There is an existing single family dwelling; however they were unable to locate proof of a building permit. The only non-conformity is the lack of frontage. The proposed house will conform to setbacks & won't be more detrimental to the neighborhood or town. No plans were submitted for the proposed house. Brown noted that plans are required in order to consider a special permit under Section 3.3.7 to construct a building greater in volume than the existing. Batchelder asked which of the plot plans the correct one is. Osgood confirmed the correct plan to be the one received 4-30-13 entitled 62 North Street Proposed Plot Plan Drawing No. V-P0001 dated 4/8/13. Dave Murray showed plans entitled "House # 13-32 26x36 Colonial" to the Board dated March 14, 2013. McDonough made a motion to close the public hearing. Brown seconded the motion & the Board voted unanimously to close the public hearing. Magenheim sat off the deliberation. The Board then proceeded to deliberate. Brown stated that Section 3.3.5 does not apply, but that a special permit under 3.3.7 is required in order to raze the existing dwelling & build a new structure. Batchelder made a motion to approve a special permit under 3.3.7 to raze the existing non-conforming dwelling & all other accessory structures & to construct a new single family dwelling that conforms to everything except the lot lacks frontage. McDonough seconded the motion & the Board voted (5-0) to approve the special permit under 3.3.7. Brown then made a motion to deny as not applicable the requested variance from 3.3.5. Bargnesi seconded the motion & the Board voted (5-0) to deny the variance as not applicable. Batchelder will write the decision.

There being no other business of the Board, Brown made a motion to adjourn the meeting. McDonough seconded the motion & the Board voted (5-0) to adjourn the meeting at 8:30 p.m.